IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3815 OF 2001
IN
FIRST APPEAL STAMP NO. 28734 OF 2001

The New India Assurance Co.Ltd. .. Applicant
v/s.
Shri M. Radhakrishnan Nair and others .. Respondents

Mr. M.G. Barve for the applicant.
Mr. M.B. Kotak for the respondent No.1.
Ms. Kavita Anehan i/by Mr. M.V. Kini for the respondent No.3.

CORAM : ABHAY S. OKA, J.
DATED : 29TH NOVEMBER, 2007

P.C.

Heard the advocate for the applicant, advocate for the first respondent and the advocate for the third respondent.

2. In the impugned judgment and order, the liability of the applicant is to the extent of Rs.1,12,164/- with 12% interest thereon. The case of the applicant is that in terms of the alleged policy, the applicant is not liable to pay interest and penalty. The case of the applicant is that the insurer has fraudulently obtained the policy. The said case has not been accepted by the learned Commissioner.

3. Considering the facts and circumstances of the case, the first respondent-claimant can be permitted to withdraw a sum of Rs.1,12,164/-. In the event of success in appeal, the applicant can always recover the said amount from the insured by executing the final judgment and order which may be passed by this court.

4. Hence, the application is disposed of by passing the following order:-

i) The learned Commissioner will permit the first respondent-original claimant to withdraw a sum of Rs.1,12,164/- deposited by the applicant. As stated earlier, in case the applicant succeeds in the appeal, the applicant can always recover the same amount from the insured.

ii) The interest component deposited by the applicant will be invested by the learned Commissioner in fixed deposit in any nationalised bank and the fixed deposit shall be renewed till the final disposal of appeal.

(iii) This order will not preclude the first respondent-claimant from executing the impugned judgment and order as against the other opponents (save and except the present applicant) in accordance with law.

There will be no order as to costs.

ABHAY S. OKA, J.